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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/971,141	10/04/2001	Laurie E. Gathman	US 010496	4048

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS
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EXAMINER	
OUELLETTE, JONATHAN P	
ART UNIT	**PAPER NUMBER**
3629	

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/971,141	GATHMAN ET AL.	
	Examiner	Art Unit	
	Jonathan Ouellette	3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 August 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-21* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. The Claim objections are withdrawn due to Applicant's amendments.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> > (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. **Claims 1-4, 9-16, and 18-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Brown (US 2003/0061303 A1).**

4. As per **independent Claim 1**, Brown discloses in a public facility in communication with at least one patron through a virtual ticket device (VTD) interface (receiver), a method of doing business, comprising: detecting that a VTD is within communication range of the VTD interface; determining the identity (unique ID) and location (GPS location) of the detected VTD; and selectively providing information to the identified VTD on the basis of the determined identity and location (Para 0013, 0017-0018, 0064).

5. As per Claim 2, Brown discloses wherein the information provided to the VTD includes a description of the determined location.

6. As per Claim 3, Brown discloses wherein the public facility maintains a database of estimated waiting times at selected facilities, and wherein the information provided to the VTD includes information relating the estimated waiting time for at least one facility (Para 0075).
7. As per Claim 4, Brown discloses wherein the request transmitted from the VTD includes a maximum-wait time, and further comprising the step of determining whether the estimated waiting time at the at least one facility is less than the maximum-wait time, and wherein the information relating to the estimated waiting time is sent upon determining that the estimated waiting time is less than the maximum-wait time.
8. As per Claim 9, Brown discloses storing in memory the determined VTD identity and location.
9. As per Claim 10, Brown discloses determining that the VTD has passed an entry point at the public facility; determining subsequently that the VTD has passed an entry point of the public facility for at least a second time; and providing automatically to the VTD information including a description of the stored location.
10. As per Claim 11, Brown discloses wherein a plurality of VTD locations have been stored, and wherein the description automatically provided describes the first stored VTD location.
11. As per **independent Claim 12**, Brown discloses in a public facility including a transceiver for communicating with virtual ticket devices (receiver), said facility having at least one status collector, a method of doing business, comprising: providing a database in communication with the status collector for storing collected status information; receiving status information for storage in the database (Para 0071); receiving a request for status

information; and transmitting the requested status information to at least one VTD (Para 0084-0086).

12. As per Claim 13, Brown discloses wherein the request for status information is received from a VTD (Para 0084-0086).
13. As per Claim 14, Brown discloses wherein the request for status information is generated automatically.
14. As per Claim 15, Brown discloses wherein the automatically-generated request is generated upon determining that the VTD has relocated from a first location to a second location.
15. As per Claim 16, Brown discloses wherein the automatically-generated request is generated upon determining that an event taking place in the public facility has ended.
16. As per **independent Claim 18**, Brown discloses a public-facility information guide (receiver), comprising: an electronic ticket control system for processing public-facility information in order to formulate information messages; at least one access point in communication with the electronic ticket control system, the access point being capable of communicating with a public-facility patron virtual ticket device; and at least one status collector in communication with the electronic ticket control system for collecting and reporting status information (Park attraction example, Para 0071-0079).
17. As per Claim 19, Brown discloses wherein the status collector collects crowd-density information (number of users within the bounds of an event location, Para 0075).
18. As per Claim 20, Brown discloses wherein the status collector collects waiting time information (Para 0075).

19. As per **independent Claim 21**, Brown discloses an electronic ticket (receiver) control system, comprising: a message database for storing information-message data; a control program for directing a processor of the electronic ticket control system to formulate an information message using the information message data, wherein the information messages are formulated in response to information requests (Para 0084-0086); an access point coupled to transmit information messages formulated by the processor to a public-facility patron virtual ticket device; and a status database for storing status information collected by a status collector, wherein the processor uses the stored status information in formulating information messages (Para 0071-0079).

Claim Rejections - 35 USC § 103

20. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

21. Claims 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Poor et al. (US 2004/0263494 A1).

22. As per Claim 7, Brown fails to expressly disclose allowing discounts when a holder of the VTD makes purchases at the concession stand and communicating information about the allowed discount to the VTD.

23. However, Poor discloses offering rewards to users to personal information system users, to include merchandise discounts (Para 0013, Para 0164).

24. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included allowing discounts when a holder of the VTD makes purchases at the concession stand and communicating information about the allowed discount to the VTD, as disclosed by Poor in the system disclosed by Brown, for the advantage of providing a personal/targeted information to system users, with the ability to increase consumer effectiveness by offering a plurality of incentives for using the system/method.

25. **Claim 5, 6, 8, and 17 is rejected under 35 U.S.C. 103 as being unpatentable over Brown.**

26. As per Claim 5, 6, and 8, Brown does not expressly show wherein the facility is a public toilet, concession stand, or aid station.

27. However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The user information system/method would be performed regardless of the facility used. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack,* 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

28. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have presented the user with the information in a plurality of facility types, because such data does not functionally relate to the steps in the method claimed and

because the subjective interpretation of the data does not patentably distinguish the claimed invention.

29. As per Claim 17, Brown does not expressly show wherein the status collector measures the rate at which vehicles are leaving a parking area associated with the public facility.

30. However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The user information system/method would be performed regardless of what the status collector measures. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack,* 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

31. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have measured the rate at which vehicles are leaving a parking area associated with the public facility with the status collector, because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

Response to Arguments

32. Applicant's arguments filed 8/18/2005, regarding Claims 1-21, have been fully considered but they are not persuasive.

33. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end

of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

34. Furthermore, the Affidavit filed on 8/8/2005 under 37 CFR 1.131 has been considered but is ineffective to overcome the Brown (US 2003/0061303 A1) reference.

35. No evidence is submitted to establish a conception of the invention prior to the effective date of the Brown's reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See Mergenthaler v. Scudder, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897).

36. The submitted Affidavit fails to include evidence, which the Applicant relies on to overcome the Brown's reference. The Affidavit is completely silent with regard to process steps recited in the independent claims; and is no more than a blank statement that a draft was completed and forwarded to the Applicant.

37. Furthermore, the evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Brown's reference (9/27/2001) to either a constructive reduction to practice (10/4/2001) or an actual reduction to practice.

38. Where conception occurs prior to the date of the reference, but reduction to practice is afterward, it is not enough merely to allege that applicant had been diligent. Ex parte Hunter,

1889 C.D. 218, 49 O.G. 7333 (Comm'r Pat 1889). Rather, the applicant must show evidence of facts establishing diligence. The Applicant must account for the entire period during which diligence is required (8/15/2001-10/4/2001). Gould V. Schawlow, 363 F.2d 908, 919, 150 USPQ634, 643 (CCPA 1966). A 2-day period lacking activity has been held to be fatal. In re Mulder, 716 F.2d 1542, 1545, 219 USPQ 189, 193 (Fed. Cir. 1983) (37 CFR 1.131 issue); Fitzgerald v. Arbib, 268 F.2d 763, 766, 122 USPQ 530, 532 (CCPA 1959) (Less than 1 month of inactivity during critical period). Efforts to exploit an invention commercially do not constitute diligence in reducing it to practice. An actual reduction to practice in the case of a design for a three-dimensional article requires that it should be embodied in some structure other than a mere drawing.); Kendall v. Searles, 173 F.2d 986, 993, 81 USPQ 363, 369 (CCPA 1949) (Diligence requires that applicants must be specific as to dates and facts.).

39. Therefore, so as the Affidavit does not provide the sufficient evidence to establish a conception of the invention prior to the effective date of the Brown's reference, and does not show diligence from a date prior to the date of reduction to practice of the Brown's reference to either a constructive reduction to practice or an actual reduction to practice, the rejection will remain as **FINAL**, based on the sited prior art.

Conclusion

40. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan Ouellette whose telephone number is (571) 272-6807. The examiner can normally be reached on Monday through Thursday, 8am - 5:00pm.

41. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone numbers for the organization

where this application or proceeding is assigned (571) 273-8300 for all official communications.

42. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Office of Initial Patent Examination whose telephone number is (703) 308-1202.

jo
October 25, 2005

JOHN G. WEISS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600